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7 Maria Hernandez, Roberto Nava,
and Azael Sanchez

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

06/04/2019 at 10:00:29 PM

Clerk of the Superior Court
By Valeria Contreras, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**

11 MARIA HERNANDEZ, an individual;
12 ROBERTO NAVA, an individual; and
AZAEL SANCHEZ, an individual,

13 Plaintiffs,

14 vs.

15 SOUTHWEST KEY PROGRAM, INC., a
16 foreign nonprofit; and DOES 1 through 50,

17 Defendant.
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CASE NO. 37-2019-00028692-CU-OE-CTL

Unlimited Civil Case

COMPLAINT FOR DAMAGES

- (1) FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF CAL. LABOR CODE §§ 204, 510
- (2) FAILURE TO PROVIDE MEAL PERIODS IN VIOLATION OF CAL. LABOR CODE §§ 226.7, 512
- (3) FAILURE TO PROVIDE REST PERIODS IN VIOLATION OF CAL. LABOR CODE § 226.7
- (4) FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS IN VIOLATION OF CAL. LABOR CODE § 226
- (5) FAILURE TO PROVIDE FINAL WAGES AT SEPARATION IN VIOLATION OF CAL. LABOR CODE §§ 201, 203
- (6) DISABILITY DISCRIMINATION IN VIOLATION OF FEHA;
- (7) FAILURE TO ACCOMMODATE IN VIOLATION OF FEHA;
- (8) WRONGFUL TERMINATION;
- (9) WHISTLEBLOWER RETALIATION IN VIOLATION OF LABOR CODE § 1102.5;
- (10) FAILURE TO PROVIDE PERSONNEL FILE IN VIOLATION OF CAL. LABOR CODE § 1198.5
- (11) CONSTRUCTIVE DISCHARGE IN VIOLATION OF PUBLIC POLICY

1 Plaintiffs MARIA HERNANDEZ (hereinafter "Hernandez"); ROBERTO NAVA
2 (hereinafter "Nava"); and AZAEL SANCHEZ (hereinafter "Sanchez" and collectively "Plaintiffs")
3 for their Complaint against Defendant SOUTHWEST KEY PROGRAM, INC., a foreign nonprofit
4 (hereinafter "Southwest Key"); and DOES 1 through 50, (hereinafter collectively "Defendants")
5 allege as follows:

6 **PARTIES**

- 7 1. Plaintiff Hernandez is, and at all relevant times was, an individual residing in the County of San
8 Diego and the work performed for Defendants occurred in San Diego County.
- 9 2. Plaintiff Nava is, and at all relevant times was, an individual residing in the County of San
10 Diego and the work performed for Defendants occurred in San Diego County.
- 11 3. Plaintiff Sanchez is, and at all relevant times was, an individual residing in the County of San
12 Diego and the work performed for Defendants occurred in San Diego County.
- 13 4. Plaintiffs are informed and believe and thereon allege that Defendant Southwest Key is a Texas
14 corporation organized and existing under the laws of the state of Texas and authorized to do
15 business as a foreign nonprofit in the State of California.
- 16 5. The true names and capacities, whether individual, corporate, associate or otherwise, of
17 Defendant DOES 1 through 50, are unknown to Plaintiffs, who therefore sue said Defendants
18 by such fictitious names. Plaintiffs will amend this Complaint by inserting the true names and
19 capacities of each such Defendants, with appropriate charging allegations, when they are
20 ascertained. Plaintiffs are informed and believe and thereon allege that each of the Defendants
21 designated herein as "DOE" is responsible in some manner for the injuries suffered by Plaintiffs
22 and for damages proximately caused by the conduct of each such Defendants as herein alleged.
- 23 6. Plaintiffs are informed and believe and thereon allege that at all relevant times Defendants
24 engaged in the acts alleged herein and/or condoned, permitted, authorized, and/or ratified the
25 conduct of its employees and/or agents, and are liable for the wrongful conduct of its
26 employees and/or agents as alleged herein.

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breaks as required by California law. Hernandez also worked long shifts, sometimes more than 15 hours.

15. Furthermore, Hernandez did not receive proper overtime pay. When she worked shifts longer than 12 hours, she received compensation at time and a half for those hours, not double time pay as required by California law.

16. On or around June 23, 2018, Hernandez fell down stairs while working the night shift and injured her ankle. She went to the emergency room at Loma Linda University Medical Center – Murrieta where she received x-rays and was instructed to follow up with her primary care provider.

17. On or around June 26, 2018, Hernandez was treated at Riverside University Health System by Maged Mikhail, MD. Hernandez discussed her ankle and her severe uncontrolled high blood pressure with the doctor. Hernandez received a note from Dr. Mikhail stating that she should remain out of work for two weeks and be re-evaluated for further time off for medical reasons.

18. On or around July 2, 2018, Hernandez was treated at Riverside University Healthy System by Crystal Nguyen, MD. Hernandez received a doctor's note from Nguyen stating that she should be allowed to change to the day shift for the purpose of patient's health. In addition to severely high blood pressure, Hernandez suffers from diabetes and working the night shift had contributed to her deteriorating health. Hernandez had asked Defendants previously to switch to the morning shift and complained of the work conditions during the night shift. Hernandez complained via e-mail: on April 19 to Linda Mendez and Sofia Hernandez; on May 17 to Linda Mendez and Ana Babuar; and on June 19 to Linda Mendez and Martha Uribe.

19. The medication prescribed to control Hernandez's high blood pressure caused her to urinate frequently. During the night shift, Hernandez was unable to take necessary bathroom breaks and requested an accommodation to be moved to the morning shift so that she could use the bathroom as needed.

20. Defendants asked that Hernandez receive a Medical Inquiry Form from her doctor and submit it to the company, which she did. The Medical Inquiry Form listed the following restrictions:
"Please allow Ms. Hernandez to work morning shift and have scheduled bathroom breaks.

1 *Night shift causes patient increase stress, imbalance diet, imbalance lifestyle causing elevation*
2 *and uncontrolled blood pressure. Please allow her to work morning shift to enable her to better*
3 *hypertension control.”* The Medical Inquiry Form further stated the anticipated return to work
4 date provided was July 10, 2018.

5 21. Despite being cleared to return to work with restrictions, Defendants ignored Hernandez’s
6 requests and never scheduled her again.

7 22. On or around July 11, 2018, Kialiah Nelson called Hernandez and said that Southwest Key
8 could not honor her doctor’s note because the San Diego facility had no openings in the
9 morning. She additionally stated that she could not place Hernandez in the morning shift
10 because it would be a “burden” to Southwest Key.

11 23. In an email to vice-president Geraldo Rivera in early July 2018, Hernandez stated: “*I feel like I*
12 *am being punished for reporting all the current situations at casa san diego.*”

13 24. On or around July 20, 2018, Martha Uribe e-mailed Southwest Key employees stating that
14 there are openings for the morning shifts.

15 25. Defendants did not engage in any interactive process with Hernandez. Instead of
16 accommodating her, Hernandez’s employment was finally terminated on or around September
17 14, 2018.

18 **FACTUAL ALLEGATIONS COMMON TO NAVA’S AND SANCHEZ’S CAUSES OF**
19 **ACTION**

20 26. Nava started working at Southwest Key as a Youth Care Worker on or around January 2, 2018
21 and was employed as such until he was forced to quit on or around December 16, 2018.

22 27. Nava worked the nightshift and, like Hernandez, did not receive proper breaks as required by
23 law. Furthermore, he did not receive all overtime wages at his correct overtime wage rate. He
24 has additional claims for inaccurate itemized wage statements and failure to provide all wages
25 due upon separation in violation of Labor Code section 203.

26 28. Sanchez started working at Southwest Key as a Youth Care Worker on March 1, 2018 and was
27 employed as such until he was forced to quit on or around September 20, 2018.

28 29. Sanchez worked the nightshift and did not receive proper breaks as required by law.

1 Furthermore, he did not receive all overtime wages at his correct overtime wage rate. He has
2 additional claims for inaccurate itemized wage statements and failure to provide all wages due
3 upon separation in violation of Labor Code section 203.

4 **FIRST CAUSE OF ACTION**

5 **Failure to Pay Overtime Wages**

6 **[California Labor Code §§ 204, 510]**

7 **(All Plaintiffs Against All Defendants)**

8 30. Plaintiffs re-allege each and every paragraph of this Complaint as though fully set forth herein.

9 31. Labor Code § 510 entitles non-exempt employees to one-half times their hourly pay for any and
10 all hours worked in excess of eight hours in any work day, for the first eight hours worked on
11 the seventh consecutive day of work in a work week, and for any work in excess of forty hours
12 in any one work week. Employees are entitled to double their hourly pay for any and all hours
13 worked in excess of 12 hours in any work day and in excess of 8 hours on the seventh
14 consecutive work day.

15 32. By failing to pay double time and other overtime compensation to Plaintiffs, Defendants
16 violated California Labor Code §§ 204 and 510. As a result of Defendants' unlawful acts,
17 Plaintiffs have been deprived of overtime compensation and are entitled to recovery of such
18 amounts plus interest thereon, attorneys' fees and costs, under Labor Code § 1194 in an amount
19 according to proof at trial.

20 **SECOND CAUSE OF ACTION**

21 **Failure to Provide Meal Periods**

22 **[California Labor Code §§ 226.7 and 512]**

23 **(All Plaintiffs Against All Defendants)**

24 33. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth herein.

25 34. Defendants failed to maintain a policy of providing meal breaks as required by Labor Code §§
26 226.7 and 512 and Plaintiffs routinely worked through their meal breaks.

27 35. California law requires employers to provide meal and rest periods to their employees. Plaintiffs
28 worked in excess of five hours a day without being provided the statutory required half hour

1 meal period in which they were relieved of their duties, as required by Labor Code §§ 226.7 and
2 512.

3 36. Because Defendants failed to provide proper meal periods, they are liable to Plaintiffs for an
4 additional hour of pay at their regular rate of compensation for each meal break not provided.

5 **THIRD CAUSE OF ACTION**

6 **Failure to Provide Rest Periods**

7 **[California Labor Code § 226.7]**

8 **(All Plaintiffs Against All Defendants)**

9 37. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth herein.

10 38. Defendants routinely and willfully required Plaintiffs to work without rest breaks. Defendant
11 failed to provide Plaintiffs with mandatory rest breaks, instead requiring Plaintiffs to labor
12 through their rest break periods in violation of California labor law.

13 39. Because Defendants failed to provide proper rest breaks, Defendants are liable to Plaintiffs for
14 one hour of additional pay at the regular rate of compensation for each workday that the proper
15 rest break was not provided, pursuant to Labor Code § 226.7.

16 **FOURTH CAUSE OF ACTION**

17 **Failure to Furnish Timely and Accurate Itemized Wage Statements**

18 **[California Labor Code § 226]**

19 **(All Plaintiffs Against All Defendants)**

20 40. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth herein.

21 41. Labor Code § 226 requires an employer to furnish its employees with an accurate itemized wage
22 statement in writing showing, among other things: (1) all applicable hourly rates in effect during
23 each respective pay period and the corresponding number of hours worked by each respective
24 individual; (2) total hours worked by each respective individual; (3) gross wages earned; (4) net
25 wages earned; (5) all deductions; (6) inclusive dates of the period for which the employee is
26 paid; (7) the name of the employee and an employee identification or social security number;
27 and (8) the name and address of the legal entity that is the employer.

28 42. As a pattern and practice, in violation of Labor Code § 226(a), Defendants failed to provide

1 Plaintiffs with accurate itemized wage statements.

2 43. As a result of Defendants' failure to provide accurate itemized wage statements, Plaintiffs
3 suffered actual damages and harm by being unable to determine their applicable hourly rate or
4 the amount of overtime worked for each pay period, which prevented them from becoming
5 aware of these violations and asserting their statutory protections under California law.

6 44. Pursuant to Labor Code § 226(e), Plaintiffs are entitled to recover the greater of all actual
7 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one
8 hundred dollars (\$100.00) for each violation in a subsequent pay period, not exceeding an
9 aggregate penalty of four thousand dollars (\$4,000.00)

10 45. Plaintiffs are entitled to an award of costs and attorneys' fees under Labor Code § 226(h).

11 **FIFTH CAUSE OF ACTION**

12 **Failure to Pay Compensation Due Upon Separation**

13 **[California Labor Code § 203]**

14 **(All Plaintiffs Against All Defendants)**

15 46. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth herein.

16 47. California Labor Code §§ 201 and 202 require Defendants to pay all compensation due and
17 owing to Plaintiffs immediately upon discharge or resignation or within seventy-two hours of
18 termination of their employment. California Labor Code § 203 provides that if an employer
19 willfully fails to pay compensation promptly upon discharge or resignation, then the employer is
20 liable for such "waiting time" penalties in the form of continued compensation up to thirty
21 workdays.

22 48. Defendants failed to pay Plaintiffs compensation due upon separation. As a result, Defendants
23 are liable to Plaintiffs for waiting time penalties provided under Labor Code § 203, plus
24 attorneys' fees and costs of suit.

25 **SIXTH CAUSE OF ACTION**

26 **Disability Discrimination in Violation of FEHA**

27 **[Govt. Code § 12940, *et seq.*]**

28 **(Plaintiff Hernandez Against All Defendants)**

1 49. Plaintiff Hernandez re-alleges each and every paragraph of this Complaint as though fully set
2 forth herein.

3 50. At all times herein mentioned, the Fair Employment and Housing Act ("FEHA"), Government
4 Code § 12940, *et seq.*, was in full force and effect and binding on Defendants. These statutes
5 make it unlawful to discriminate against an employee on the basis of a disability.

6 51. Defendants discriminated against Plaintiff on the basis of her disability by ignoring, refusing,
7 and rebuffing her requests to return to work and then ultimately terminating her employment.

8 52. As a proximate result of Defendants' willful, knowing and intentional discrimination of
9 Plaintiff, Plaintiff has sustained and continues to sustain substantial losses in earnings and other
10 benefits.

11 53. As a proximate result of Defendants' willful, knowing and intentional discrimination of
12 Plaintiff, Plaintiff has suffered and continues to suffer humiliation, emotional distress, and
13 mental and physical pain and anguish, all to her damage in a sum according to proof.

14 54. Plaintiff is informed and believes and thereon alleges that Defendants' actions were taken with
15 malice, oppression, fraud, and/or willful and conscious disregard of Plaintiff's rights, and were
16 carried out by Defendants' managing agents and/or ratified by Defendants. Plaintiff is therefore
17 entitled to punitive damages in an amount to be determined at trial as well as attorneys' fees.

18 **SEVENTH CAUSE OF ACTION**

19 **Failure to Accommodate in Violation of FEHA**

20 **[Govt. Code § 12940(m)]**

21 **(Plaintiff Hernandez Against All Defendants)**

22 55. Plaintiff re-alleges each and every paragraph of this Complaint as though fully set forth herein.

23 56. Under FEHA, Defendants are required to engage in a timely, good faith, interactive process with
24 an employee it believes has a disability or who, in fact, has a disability, to determine if that
25 employee needs reasonable accommodations to perform the job.

26 57. By engaging in the course of conduct as alleged above, Defendants failed to provide Plaintiff
27 with reasonable accommodations and they failed to engage in a timely, good faith, interactive
28 process with Plaintiff to determine effective reasonable accommodations to the extent she

1 needed them in violation of the applicable provisions of Government Code §§ 12940, *et seq.*
2 58. As a proximate result of Defendants' willful, knowing and intentional discrimination against
3 Plaintiff, as a result of Defendants' failure to reasonably accommodate Plaintiffs' disabilities,
4 Plaintiff has sustained and continues to sustain substantial losses in earnings and other benefits.
5 59. As a proximate result of Defendants' willful, knowing and intentional discrimination against
6 Plaintiff, as a result of Defendants' failure to reasonably accommodate Plaintiffs' disabilities,
7 Plaintiff has suffered and continues to suffer humiliation, emotional distress, and physical and
8 mental pain and anguish, all to her der damage in a sum according to proof.
9 60. By ignoring, refusing, and rebuffing Plaintiff's requests to return to work and then ultimately
10 terminating her employment without providing her with a reasonable accommodation,
11 Defendants acted with intent to cause injury to Plaintiff, or Defendants' conduct was despicable
12 and done with a willful and knowing disregard of the rights or safety of Plaintiff. Defendants
13 acted with knowing disregard as they were aware of the probable consequences of its conduct
14 and deliberately failed to avoid those consequences. Defendants subjected Plaintiff to cruel and
15 unjust hardship in knowing disregard of Plaintiff's rights. Accordingly, Plaintiff, requests the
16 assessment of punitive damages against Defendants in an amount appropriate to punish and
17 make an example of Defendants.
18 61. Plaintiff is further entitled to recover attorneys' fees pursuant to the provisions of Government
19 Code §§ 12940, *et seq.*

20 **EIGHTH CAUSE OF ACTION**

21 **Wrongful Termination in Violation of Public Policy**

22 **(Plaintiff Hernandez Against All Defendants)**

23 62. Plaintiff Hernandez re-alleges each and every paragraph of this Complaint as though fully set
24 forth herein.
25 63. Plaintiff's employment was terminated in violation of the fundamental public policies of the
26 State of California including those set out in the California Fair Employment and Housing Act
27 and the California Labor Code.
28 64. As a direct and foreseeable result of the aforesaid acts of Defendants, Plaintiff lost and will

1 continue to lose income and other benefits in an amount to be proven at trial. Plaintiff seeks
2 back pay, front pay, and all other appropriate remedies. Plaintiff also incurred attorney fees and
3 thereby claims such amount as damages, together with pre-judgment interest.

4 65. Because the acts taken toward Plaintiff by Defendants were deliberate, malicious and undertake
5 to injure Plaintiff, Plaintiff requests an assessment of punitive damages in an amount to be
6 proven at trial.

7 **NINTH CAUSE OF ACTION**

8 **Whistleblower Retaliation**

9 **[Labor Code § 1102.5]**

10 **(Plaintiff Hernandez Against All Defendants)**

11 66. Plaintiff re-allege each and every paragraph of this Complaint as though fully set forth herein.

12 67. California Labor Code section 1102.5 prohibits an employer from retaliating against an
13 employee for disclosing information, or because the employer believes that the employee
14 disclosed or may disclose information, to a government or law enforcement agency, to a person
15 with authority over the employee or another employee who has authority to investigate,
16 discover, or correct the violation or noncompliance, or for providing information to, or
17 testifying before, any public body conducting an investigation, hearing, or inquiry, if the
18 employee has reasonable cause to believe that the information discloses a violation of state or
19 federal statute, or a violation of or noncompliance with a local, state, or federal rule or
20 regulation, regardless of whether disclosing the information is part of the employee's job duties.

21 68. As alleged above, Plaintiff made complaints of child abuse and disclosed information to other
22 persons with authority over herself.

23 69. Plaintiff's activity protected by Labor Code section 1102.5 was a contributing factor in
24 Defendants' decision to discharge Plaintiff.

25 70. As a proximate result of the unlawful conduct of Defendants, Plaintiff has suffered and
26 continues to suffer substantial losses in earnings and other employment benefits in an amount
27 according to proof at the time of trial.

28 71. As a further proximate result of the wrongful conduct of Defendants, Plaintiff has suffered and

continues to suffer shock, grief, stress, anxiety, depression, and mental anguish, all to her damage in an amount according to proof at the time of trial.

72. In doing the acts herein alleged, Defendants acted with oppression, fraud, malice, and in the conscious disregard of the rights of Plaintiff, and Plaintiff is therefore entitled to punitive damages in an amount according to proof at the time of trial.

73. Plaintiff is entitled to an award of her reasonable attorneys' fees and costs pursuant to Code of Civil Procedure section 1021.5 because she filed this action to provide a significant benefit to the general public and/or a large class of persons.

74. Plaintiff is also entitled to \$10,000 in civil penalties for each violation pursuant to Labor Code section 1102.5(f).

TENTH CAUSE OF ACTION

Failure to Provide Personnel File

[California Labor Code § 1198.5]

(All Plaintiffs Against All Defendants)

75. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth herein.

76. Request for Plaintiffs' personnel files was made by their counsel on January 14, 2019.

77. Plaintiffs' personnel files were not produced to date.

78. Labor Code section 1198.5 provides that when an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records, the employee may recover a penalty of \$750 from the employer plus attorneys' fees.

ELEVENTH CAUSE OF ACTION

Constructive Discharge in Violation of Public Policy

(Plaintiffs Nava and Sanchez Against All Defendants)

79. Plaintiffs re-allege each paragraph of this Complaint as though fully set forth herein.

80. Defendants created work conditions so intolerable that Plaintiffs had no alternative but to resign.

81. Plaintiffs' working conditions were so intolerable and aggravated that a reasonable employer would have realized that a reasonable employee in the position of Plaintiff would be compelled to resign.

1 82. By reason of the aforementioned conduct and circumstances, Defendants, and each of them,
2 violated the fundamental public policies of the State of California, as set forth in section 12940
3 of the Government Code and California Constitution which mandate that employees be free
4 from unlawful discrimination and harassment.

5 83. Defendants' constructive discharge of Plaintiffs is a violation of California's public policy.

6 84. As a direct and proximate result of Defendants' constructive discharged, Plaintiffs have suffered
7 damages, the precise amount to be proven at trial.

8
9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

- 11 (a) For general, special, compensatory damages;
12 (b) For exemplary and punitive damages;
13 (c) For emotional distress damages;
14 (d) For reasonable attorneys' fees;
15 (e) For pre-judgment and post-judgment interest at the maximum legal rate;
16 (f) For costs of suit incurred;
17 (g) For such other and further relief as the Court deems just and proper.

18
19 DATED: May 20, 2019

MARLIS LAW, P.C.

20
21 By: 

22 Brent P. Marlis
23 Younk K. Park
24 Attorney for Plaintiffs,
25 Maria Hernandez, Roberto Nava, and Azael
26 Sanchez

27 **DEMAND FOR JURY TRIAL**

28 Plaintiffs hereby demand a trial by jury on all claims.

1
2 DATED: May 20, 2019

MARLIS LAW, P.C.

3
4 By:


Brent P. Marlis

Young K. Park

Attorney for Plaintiffs,

Maria Hernandez, Roberto Nava, and Azael
Sanchez

Exhibit A



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

May 20, 2019

Brent Marlis
10940 Wilshire Blvd., Suite 1600
Los Angeles, California 90024

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 201905-06196320
Right to Sue: Hernandez / Southwest Key Program, Inc.

Dear Brent Marlis:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

May 20, 2019

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 201905-06196320
Right to Sue: Hernandez / Southwest Key Program, Inc.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. This case is not being investigated by DFEH and is being closed immediately. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

May 20, 2019

Maria Hernandez
13160 Mindanao Way
Marina Del Rey, California 90292

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 201905-06196320
Right to Sue: Hernandez / Southwest Key Program, Inc.

Dear Maria Hernandez,

This letter informs you that the above-referenced complaint was filed with the Department of Fair Employment and Housing (DFEH) has been closed effective May 20, 2019 because an immediate Right to Sue notice was requested. DFEH will take no further action on the complaint.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**
7 Maria Hernandez

DFEH No. 201905-06196320

8 Complainant,

9 vs.

10 Southwest Key Program, Inc.

11 Respondents

12 1. Respondent **Southwest Key Program, Inc.** is an **employer** subject to suit under
13 the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et
14 seq.).

15 2. Complainant **Maria Hernandez**, resides in the City of **Marina Del Rey** State of
16 **California**.

17 3. Complainant alleges that on or about **September 14, 2018**, respondent took the
18 following adverse actions:

19 **Complainant was discriminated against** because of complainant's disability
20 (physical or mental) and as a result of the discrimination was terminated, denied
21 reasonable accommodation for a disability.

22 **Complainant experienced retaliation** because complainant requested or used a
23 disability-related accommodation and as a result was terminated, denied reasonable
24 accommodation for a disability.

25 **Additional Complaint Details:** On or around March 18, 2018, Hernandez started
26 her employment at Southwest Key as a Youth Care Worker at the Casa San Diego
27 location.

28 Early in her employment, Hernandez complained of various unlawful conduct to her
supervisors including incidences of child abuse, unpaid overtime hours, missed

breaks, and a failure to accommodate her disability. Hernandez complained in person, telephonically, and via e-mail.

One of the complaints made by Hernandez was to program director, Linda Mendez, regarding child abuse that Hernandez witnessed. Hernandez saw a child denied access to the restroom despite pleading with youth care workers to allow him to go. The child then attempted to use the bathroom anyway and was tackled by staff. The same child was later given medication for which he was not prescribed. The staff told Hernandez that "you need to learn how to work here. You're going to see a lot of things and need to learn how to keep your mouth shut."

On April 19, 2018, Hernandez sent an e-mail to Sofia Hernandez, Linda Mendez and Ana Babudar with the subject "Incident report." The e-mail described an incident of child abuse where a minor's safety was jeopardized.

Hernandez also complained about her missed meal and rest breaks. She worked the night shift at Casa San Diego and, due to staff shortages, she did not receive uninterrupted rest and meal breaks as required by California law. Hernandez also worked long shifts, sometimes more than 15 hours.

Furthermore, Hernandez did not receive proper overtime pay. When she worked shifts longer than 12 hours, she received compensation at time and a half for those hours, not double time pay as required by California law.

On or around June 23, 2018, Hernandez fell down stairs while working the night shift and injured her ankle. She went to the emergency room at Loma Linda University Medical Center – Murrieta where she received x-rays and was instructed to follow up with her primary care provider.

On or around June 26, 2018, Hernandez was treated at Riverside University Health System by Maged Mikhail, MD. Hernandez discussed her ankle and her severe uncontrolled high blood pressure with the doctor. Hernandez received a note from Dr. Mikhail stating that she should remain out of work for two weeks and be re-evaluated for further time off for medical reasons.

On or around July 2, 2018, Hernandez was treated at Riverside University Healthy System by Crystal Nguyen, MD. Hernandez received a doctor's note from Nguyen stating that she should be allowed to change to the day shift for the purpose of patient's health. In addition to severely high blood pressure, Hernandez suffers from diabetes and working the night shift had contributed to her deteriorating health.

Hernandez had asked Defendants previously to switch to the morning shift and complained of the work conditions during the night shift. Hernandez complained via e-mail: on April 19 to Linda Mendez and Sofia Hernandez; on May 17 to Linda Mendez and Ana Babuar; and on June 19 to Linda Mendez and Martha Uribe.

The medication prescribed to control Hernandez's high blood pressure caused her to urinate frequently. During the night shift, Hernandez was unable to take necessary bathroom breaks and requested an accommodation to be moved to the morning shift so that she could use the bathroom as needed.

Defendants asked that Hernandez receive a Medical Inquiry Form from her doctor and submit it to the company, which she did. The Medical Inquiry Form listed the

1 following restrictions: "Please allow Ms. Hernandez to work morning shift and have
2 scheduled bathroom breaks. Night shift causes patient increase stress, imbalance
3 diet, imbalance lifestyle causing elevation and uncontrolled blood pressure. Please
4 allow her to work morning shift to enable her to better hypertension control." The
5 Medical Inquiry Form further stated the anticipated return to work date provided was
6 July 10, 2018.

7 Despite being cleared to return to work with restrictions, Defendants ignored
8 Hernandez's requests and never scheduled her again.

9 On or around July 11, 2018, Kialiah Nelson called Hernandez and said that
10 Southwest Key could not honor her doctor's note because the San Diego facility had
11 no openings in the morning. She additionally stated that she could not place
12 Hernandez in the morning shift because it would be a "burden" to Southwest Key.
13 In an email to vice-president Geraldo Rivera in early July 2018, Hernandez stated: "I
14 feel like I am being punished for reporting all the current situations at casa san
15 diego."

16 On or around July 20, 2018, Martha Uribe e-mailed Southwest Key employees
17 stating that there are openings for the morning shifts.

18 Defendants did not engage in any interactive process with Hernandez. Instead of
19 accommodating her, Hernandez's employment was finally terminated on or around
20 September 14, 2018.
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1 VERIFICATION

2 I, **Brent Marlis**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On May 20, 2019, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

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